

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 00-0356
SALES AND USE TAX
FOR TAX PERIODS: 1997-1998

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1. Sales and Use Tax: Delivery Charges

Authority: IC 6-2.5-2-1, IC 6-2.5-4-1, IC 6-2.5-4-1 (e).

Taxpayer protests the imposition of tax delivery charges.

2. Tax Administration: Penalty

Authority: IC 6-8.1-10-2.1, 45 IAC 15-11-2(b).

Taxpayer protests the imposition of penalty.

Statement of Facts

Taxpayer is an Indiana corporation which produces and sells concrete. Additional Sales Tax, interest and penalty were assessed after a routine audit. Taxpayer protested the assessment and submitted written materials in lieu of a hearing. Further facts will be provided as necessary.

1. Sales and Use Tax: Delivery Charges

Discussion

Taxpayer produces ready mix concrete. The raw materials are poured into the concrete mixer which processes the concrete en route to the customer's location. Taxpayer charges for the concrete by the amount of materials used in the mixing of the concrete and adds a separately stated delivery charge. Taxpayer did not collect sales tax on the delivery charges. The Indiana Department of Revenue audit assessed sales tax on the delivery charges and Taxpayer protested that assessment.

IC 6-2.5-2-1 imposes a sales tax "on retail transactions made in Indiana." Retail transactions are the transfer of tangible personal property for consideration by a retail merchant. IC 6-2.5-4-1

Taxpayer contends that this assessment is incorrect because the delivery charges are not tangible personal property. Rather, Taxpayer contends, that the delivery charges qualify for exemption as nontaxable services.

The taxability of services related to a sale of tangible personal property is considered at IC 6-2.5-4-1 (e) as follows:

The gross retail income received from selling at retail is only taxable under this article to the extent that the income represents:

- (1) the price of the property transferred, without the rendition of any service; and
- (2) except as provided in subsection (g), any bona fide charges which are made for preparation, fabrication, alteration, modification, finishing, completion, delivery, or other service performed in respect to the property transferred before its transfer and which are separately stated on the transferor's records.

The production of the concrete begins when the raw materials are poured into a cement truck where the processing occurs. The processing continues through the transportation period and is not completed until the concrete is poured for the customer. The Indiana Department of Revenue allows for a manufacturing exemption on the cement trucks since they are part of the manufacturing process. Taxpayer contends that the title to the concrete passes to the customer when the materials are poured into the cement mixer. If title transferred before the manufacturing or processing of the concrete as Taxpayer alleges, there would be no manufacturing exemption for the cement trucks. Title to the concrete does not pass until the concrete is actually fully processed and delivered to the customer. The delivery service takes place prior to the transfer of the property. As such, the sales tax must be imposed on the delivery charge.

Finding

Taxpayer's protest is denied.

2. Tax Administration: Penalty

Discussion

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Taxpayer also protests the imposition of the ten per cent negligence penalty pursuant to IC 6-8.1-10-2.1. Indiana Regulation 45 IAC 15-11-2 (b) clarifies the standard for the imposition of the negligence penalty as follows:

“Negligence”, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer’s carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence.

Upon previous examination by the Indiana Department of Revenue, no additional assessment was made. Therefore, Taxpayer’s failure to collect and remit sales tax on the delivery charges does not constitute negligence in this instance.

Finding

Taxpayer’s protest is sustained.